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23 UNITED STATES DISTRICT COURT
24 NORTHERN DISTRICT OF CALIFORNIA
25 SAN FRANCISCO DIVISION

26 IN RE KOREAN RAMEN ANTITRUST
27 LITIGATION

28 Case No. 3:13-cv-04115-WHO

29 **PLAINTIFFS' MEMORANDUM OF POINTS
30 AND AUTHORITIES IN OPPOSITION TO
31 DEFENDANTS' OBJECTION TO CERTAIN
32 EXHIBITS AND DESIGNATIONS OF THE
33 DEPOSITION OF SOO CHANG AHN**

34 This Document Relates to:

35 Date: November 14, 2018

36 ALL ACTIONS

37 Time TBD

38 Courtroom: 2, 17th Floor

39 Judge: Hon. William H. Orrick

1 Plaintiffs submit this memorandum of points and authorities in response to Defendant
 2 Ottogi's Objections, dated November 14, 2018, concerning the witness statement of Soo Chang
 3 Ahn [ECF# 795].

4 Plaintiffs propose to introduce two witness statements by Mr. Soo Chang Ahn of Samyang
 5 which he reviewed, signed and submitted to the KFTC.

- 6 • The first statement (Exh. 158) is dated April 1, 2010. At his
 deposition, Mr. Ahn was shown the document, and he testified under
 oath that his signature appeared on both the first and last pages of the
 exhibit (1/12/16 TR 27:18-28:10). He confirmed that he reviewed the
 statement before it was submitted to the KFTC (TR 29:15-19), that he
 believed it was true and correct at the time he signed it (1/12/16 TR
 29:20-25), and he maintained that belief at the time he was deposed
 (1/12/16 TR 30:1-5).
- 10 • The second statement (Exh. 156) is dated September 5, 2011. At his
 deposition, Mr. Ahn was shown the document, and he testified under
 oath that he had signed each page of the statement (1/12/16 TR 40:12-
 41:09), that he reviewed it before it was submitted to the KFTC
 (1/12/16 TR 41:9-12), that he believed that the statements contained in
 it were true and correct at the time that he submitted the statement to
 the KFTC (1/12/16 TR 41:13-17), and that he maintained that belief at
 the time he was deposed (1/12/16 TR 41:18-25).

14 In the spirit of compromise, Plaintiffs have agreed to withdraw Trial Exhibit 159.

15 In its April 24, 2018 Order concerning Motions in Limine (ECF No. 740), the Court denied
 16 Defendants' motion to exclude all such statements, stating that admissibility would be determined
 17 on a case-by-case basis. The Court did provide the following guidance, however, which clearly
 18 applies in the case of Mr. Ahn's two witness statements:

19 Generally, as discussed in the Order on the motions for summary
 20 judgment, the Samyang witnesses provide some basis for their opinions
 21 (even if disputed or "walked back" in deposition). The Samyang witness
 22 statements also appear to be made adequately close in time to the at issue
 23 events, many were subject to later adoption through deposition or
 24 otherwise under oath, and they may otherwise be admissible under various
 25 hearsay exceptions.

26 *Id.* at 5.

27 First, Mr. Ahn's Witness Statements are admissible under the adopted testimony exception
 28 to Fed. R. Civ. P. 43(a). *See Kuntz v. Sea Eagle Diving Adventures, Corp.*, 199 F.R.D. 665, 668 (D.
 Haw. 2001) (a declaration may be adopted as direct testimony if the witness testifies about the
 declaration under oath and is subject to cross and redirect examination).

1 Second, because the Witness Statements themselves were subject to cross examination at
 2 deposition, they are also admissible under the residual exception of Fed. R. Evid. 807, as they have
 3 circumstantial guarantees of trustworthiness. *Id.* (declaration had “circumstantial guarantees of
 4 trustworthiness, especially because the declarants are subject to live cross-examination”). For
 5 example, during cross-examination, Defendants were able to determine that Mr. Ahn lacked
 6 personal knowledge concerning a “President’s Meeting” that he had discussed in Paragraph 4 of the
 7 April 1, 2010 Statement. As a result, Plaintiffs have agreed to redact this portion of that Witness
 8 Statement (Exh. 158).

9 Third, Mr. Ahn’s Witness Statements are declarations against interest because the testimony
 10 in the Witness Statements contain admissions of participation in illegal conduct engaged in by
 11 declarants, and they are bolstered by significant additional corroborating evidence. *See* Fed. R.
 12 Evid. 804(b)(3).

13 Defendants may cherry pick certain testimony in Mr. Ahn’s Witness Statements to try to
 14 poke holes at their reliability, but these issues go to the weight of the evidence, and not its
 15 admissibility. *See Jackson v. Cty of San Bernardino*, 194 F. Supp. 3d 1004, 1008 (C.D. Cal. 2016)
 16 (“a motion in limine should not be used to resolve factual disputes or weigh evidence”) (quoting
 17 *C&E Services, Inc. v. Ashland, Inc.*, 539 F. Supp. 2d 316, 323 (D.D.C. 2008)). These issues should
 18 be left to the jury to decide. *Id.* (citing *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 150
 19 (2000)).¹ There is no reason to exclude, wholesale, an entire Witness Statement merely because
 20 Defendants have pointed to certain supposed weaknesses in the testimony.

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 25 ¹ For example, Nongshim argued to the Court earlier today that that the “evidence” demonstrates
 26 that Mr. Ahn wasn’t at the March 2001 Ramen Conference, because his signature does not appear
 27 on the meeting minutes. While this is a disputed factual issue not appropriate for exclusion by the
 28 Court, Plaintiffs note that that Mr. Ahn testified that he personally attended the meeting, and the
 statements he provided in his signed statement to the KFTC “were from [his] personal experience
 after attending that meeting.” 1/13/16 TR at 46:21-47:2, 1/13/16 TR at 98:5-99:6).

DATED: November 14, 2018

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